

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Improving Communications Services for Native Nations	)	CG Docket No. 11-41
	)	

**NOTICE OF INQUIRY**

**COMMENTS OF  
ALEXICON TELECOMMUNICATIONS CONSULTING**

Alexicon Telecommunications Consulting (“Alexicon”) hereby submits its Comments to the Federal Communications Commission (“FCC” or “Commission”) in response to the Commission’s Notice of Inquiry (“NOI”).<sup>1</sup>

**GENERAL**

Alexicon provides professional management, financial and regulatory services to a variety of small rate-of-return Incumbent Local Exchange Carriers (“ILECs”)<sup>2</sup> who serve diverse geographical areas characterized by rural, insular or Native American Tribal Lands. These ILECs, similar to most other small rate-of-return regulated ILECs, currently provide a wide range of technologically advanced services to their customers. While Alexicon has worked extensively with a number of Tribal Nations in the past, currently two of Alexicon’s clients are Tribally owned telecommunications companies. Together with participation in Federal high cost funding programs, and with their continued investment in network infrastructure, Tribal telecom entities are providing customers in Tribal areas with services equal to or greater than urban areas, and at comparable pricing. Furthermore, these Tribal ILECs are committed to providing their customers with innovative solutions by adapting

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<sup>1</sup> Adopted: March 3, 2011 Released: March 4, 2011

<sup>2</sup> As defined by the Telecommunications Act of 1996 (“Act”).

technologies that fit Native American Tribal Lands, including Broadband and IP-enabled services. The stated and implied purposes of, and the issues raised in, the NOI are of particular import to our clients who are all highly dependent upon Universal Service Funding to recover the higher cost of providing services to their customers, compared to larger, more urban service providers.

It is through the use of USF funds that these Tribally owned ILECs have been able to provide their customers (in rural and often insular locales) with modern telecommunications services comparable to urban areas at rates lower than they otherwise would be charged without the availability of these USF funds. The ability of Tribal ILECs to partake of high-cost USF funding is not only pursuant to the 1996 Telecommunications Act (the “Act”) but is also consistent with the federal government’s Trust responsibility and has acted as a major incentive toward the financial community (local, state, federal, etc.). USF funding has provided these ILECs with the continued stability to attract sufficient financial resources to maintain and improve customer services as well as their connectivity to the Public Switched Telephone Network (“PSTN”).

Alexicon notes that Tribally owned small ILECs receiving existing high-cost USF funds attest that these USF funds are fulfilling the 1996 Act objectives of providing “specific, predictable and sufficient federal and state mechanisms to preserve and advance universal service.”<sup>3</sup> We also believe it is critical for the viability of these companies, and for maintaining comparable rural telecommunications services, to continue receiving USF fund flows in complying with this mandate, whether it be through the continued use of the existing mechanisms or a separate Native Nations Broadband Fund as recommended in the National Broadband Plan (“NBP”)<sup>4</sup>. In addition, Alexicon notes that all rate-of-return designated Tribal ILECs receiving high-cost USF funding are subject to compliance with FCC Rules, in-depth review of conformity with those rules, and related review of fund distribution amounts by the National Exchange Carrier Association (“NECA”), Universal Service Administration Company (“USAC”), and other various state and federal regulatory (and auditing) authorities. This ensures that the high-cost funds are correctly being requested

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<sup>3</sup> The Act, Section 254 (b)(5)

<sup>4</sup> NBP at 152

by and distributed to these ILECs. Lastly, the fact that fund recipients are also required to annually certify that they are utilizing the high-cost USF funds “for the provision, maintenance, and upgrading of facilities and services for which the support is intended”<sup>5</sup> further validates to regulators, fund contributors, and others that consumers are getting the maximum benefit(s) of the high-cost USF monies received by these carriers.

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## **I. INTRODUCTION**

As published in the Federal Register, there are 564 federally recognized Tribes<sup>6</sup> representing approximately 4.1 million American Indians and Alaska Natives in the United States and while there is a deep digital divide that exists between Native Nations and the rest of the country, it does not exist for those areas served by eight Tribally-owned local exchange carriers.<sup>7</sup> These carriers are an example of how the system has worked in the most un-served and under-served areas of the country. All of these areas have utilized Universal Service Funds (“USF”) to provide voice and broadband services to their communities in accordance with the Act. The support

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<sup>5</sup> Id. Section 254(e)

<sup>6</sup> Federal Register/Vol. 75, No. 190/Friday, Oct. 1, 2010

<sup>7</sup> The eight Tribally-owned local exchange carriers with ETC designations are: Hopi Telecommunications, Inc.(Hopi Tribe); San Carlos Telecommunications and Utilities, Inc. (San Carlos Apache Tribe); Mescalero Apache Telecommunications, Inc. (Mescalero Apache Tribe); Gila River Telecommunications, Inc. (Gila River Indian Community); Saddleback Communications (Salt River Pima Maricopa Indian Tribe); Fort Mojave Telecommunications, Inc. (Fort Mojave Indian Tribe); Tohono O’odham Utility Authority (Tohono O’odham Nation); and Cheyenne River Sioux Tribe Telephone Authority (Cheyenne River Sioux Tribe).

received by these companies was/is essential for the construction, maintenance and operation of the networks required for the delivery of both basic and robust broadband services.

Alexicon supports the intent of the National Broadband Plan (“NBP”) to establish a Native Nations Broadband Fund in order to bring high capacity connectivity to Tribal government headquarters and/or anchor institutions for planning, studies, technical assistance and other areas of critical needs.<sup>8</sup> Alexicon understands the significant challenges that most Tribes face and support many of the conclusions regarding those challenges as presented in the NBP.

As with most rural ILECs, the eight Tribally owned carriers are all unique, each having similar reasons for starting their own telecommunications company while using different business plans and methodologies. The common theme amongst each of these companies is the availability of sufficient and predictable funds necessary to not only build modern robust communications infrastructure but to maintain and operate it as well. Grants and short term assistance alone will not be sufficient to overcome the digital divide.

## **II. NATIVE NATIONS BROADBAND FUND**

The Commission, through the NBP and elsewhere<sup>9</sup>, has recognized the unique challenges and significant obstacles that Tribal lands face along with the fact that Native Nations will need substantially greater financial support than is presently available through existing federal programs<sup>10</sup>. Alexicon recognizes the success of the eight existing Tribally owned carriers<sup>11</sup> and recommends that any fund designed to support sustainable broadband deployment and adoption on Tribal lands need only look at their successes. In the interest of efficiency and prior successes with the current programs, Alexicon recommends that a Native Nations Broadband Fund (“NNBF”) be administered under the current structure by the Universal Service Administration Corporation (“USAC”), the National Exchange Carriers Association (“NECA”) or other agencies deemed appropriate for oversight purposes under current federal regulations.

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<sup>8</sup> Id. At Recommendation 8.18

<sup>9</sup> FCC 10-199, petition by Gila River Telecommunications, FCC Order granting waiver approval

<sup>10</sup> NOI at ¶ 9

<sup>11</sup> ID Fn 8

### **III. NATIVE NATIONS BUSINESS MODELS FOR DEPLOYMENT**

Alexicon believes it is important to address Tribal Nations as a critical and interlaced segment of the nation's telecommunications network and speak to the fact that they indeed have unique circumstances that need addressed. It is also important to recognize the distinct circumstances that each of the eight Tribal carriers faced as they developed business plans. Therefore it is important to realize that each Tribe is unique and that cost-based, rate-of-return based mechanisms offer the best opportunity for success on Tribal lands.

The Commission has noted, in its own language, that the “current system of high cost support has achieved considerable success, helping ensure access to affordable, voice services in all regions of the nation”<sup>12</sup>. What needs to be clearly stated is that the current high cost programs and associated mechanisms provide for last mile connectivity, including FTTH deployment (high cost loop USF and ICLS USF) and Local Switching Support (i.e. circuit-based and soft switches). Because, based on FCC data and various publicly available documents, the penetration rate in Indian Country is still well below the national level, the current system provides for very necessary emergency response public safety considerations as well as basic service for Tribal customers, and is therefore still very pertinent and relevant.

One area of concern that should be addressed is the need for funding to support Tribes during the start-up phase, including the cost of developing business plans; securing capital and other financing; and securing equipment and other components necessary to not only start but maintain viable operating companies capable of providing robust voice and data services. The lack of funding for the start-up phase may at least partially explain why only 8 of 564 Tribes (1.4%) have taken this important step to provide basic and advanced service for their members.

### **IV. ELIGIBLE TELECOMMUNICATIONS CARRIER DESIGNATIONS ON TRIBAL LANDS**

The NBP recommends that “Tribal governments should play an integral role in the process for designating carriers who may receive [universal service] support to serve Tribal lands”<sup>13</sup> Alexicon supports the recommendation that the ETC designation process should require

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<sup>12</sup> FCC 10-58, Notice of Inquiry and Notice of Proposed Rulemaking, adopted April 10, 2010 at ¶ 3

<sup>13</sup> National Broadband Plan at 146, Recommendation 8.5.

consultation with Tribal Nations with any plans to serve Tribal lands. In fact, Tribes should have the same regulatory authority as states, especially with respect to the designation of carriers as Eligible Telecommunications Carriers (“ETC”). Alexicon supports Native government’s right to choose their ETC providers. Notification should be provided to Tribal governments on all federal filings made by an ETC that affect a Tribe’s communications and land resources. An ETC that fails to fully connect all Tribal areas should be subject to Commission action and, in consultation with Tribes, consideration given to remove the carrier from its ETC status allowing for the Tribe to exercise its ETC choice.

## **V. CONSULTATION AND COORDINATION WITH NATIVE NATIONS**

Alexicon supports the Commission’s commitment to consult with Tribal governments prior to implementing any regulatory action or policy that will significantly or uniquely affect Tribal governments, their land and resources,<sup>14</sup> and recognizes the value that the recently formed Office of Native Affairs and Policy (“ONAP”) has brought to these critical discussions. Under the principals of sovereignty and also supported by federal law<sup>15</sup>, Tribal governments have standing equal to that of a state government and must be allowed to determine unserved areas and the provider who will provide broadband and essential life-line services on their land. Tribes must be part of the process of determining who will provide carrier of last resort (“COLR”) services that meet the needs of their Community.

## **VI. ADDITIONAL TRIBAL CONSIDERATIONS**

If the FCC adopts the ideas proposed in the latest Connect America Fund (“CAF”) Notice of Proposed Rulemaking (“NPRM”) as written, there will be a considerable amount of underfunding at the rural ILEC level, including those serving Tribal lands. This means that local rates will need to be raised; state rates will need to be raised; financing companies like RUS, CoBank, RTFC, etc. may not be able to continue to lend money; jobs will be lost on Tribal lands; and network infrastructure will not continue to get built out. This specifically goes against Section 254 of the Act regarding “affordability” of rates and puts local consumer rates at risk. More importantly for Tribal entities is that this will put more pressure on Lifeline customers in Indian

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<sup>14</sup> NOI ¶ 73(2)

<sup>15</sup> Section 54.5 re: definition of “State Commission”

Country due to increased non-recoverable state and local costs and will delay getting those customers hooked up to even basic service due to lack of resources received by the Tribal ILEC. Since the majority of a Tribal carrier's customers (and those customers living on Indian lands in general) are Lifeline-eligible, this is very concerning. In addition, there will be increased costs to Tribal ILECs to transition to and provide SIP services for customer premise equipment and basic hook up. Furthermore, 911 and public emergency considerations come into play since SIP service is currently substandard to current TDM/POTS service for public safety and 911 reasons.

Lastly, Tribal lands are typically in geographically isolated locations where small pockets of Native American groups are served. For those reasons, the costs associated with delivering both basic and broadband services to those areas are very high. In this respect, Alexicon believes it would be appropriate to include American Indians, Alaska Natives, and Native Hawaiians in consideration for the NNBF. As with all Tribal Nations, the goal is to make broadband services available at affordable rates and therefore achieve higher penetrations levels for these native groups.

## **VII. CONCLUSION**

Alexicon sincerely appreciates the opportunity to submit these comments in this most important proceeding. Alexicon applauds the Commission in its quest and agrees that broadband deployment should be the cornerstone of future telecommunications in all areas of the United States, including Tribal and insular areas. By creating a stable, predictable, and sufficient financial model for Tribes, the Commission will meet its commitment to ensuring that all Americans have access to emerging services and technologies<sup>16</sup>. With a practical, sustainable plan, the United States will unquestionably reach to the top of world leaders in broadband deployment.

**Respectfully submitted,**

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<sup>16</sup> NOI ¶3